

The Department rule on exempt organizations, 86 Ill. Adm. Code 130.2005(a)(4)(B), limits the exempt occasional dinners, rummage sales or similar fundraisers that can be held by exclusively religious, educational or charitable organizations to not more than two in any calendar year. (This is a GIL.)

May 17, 2002

Dear Xxxxx:

This letter is in response to your letter dated February 28, 2002 that was received in our office on March 14, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

The CITY is currently reviewing its permit ordinance concerning personal property items sold at garage sales, yard sales, etc. According to the Illinois Department of Revenue's regulations Title 86, Part 130, Retailers' Occupation Tax does not have to be charged on occasional sales that are held only twice a year. The regulations are silent on the duration of these two occasional sales during the year.

Please advise as to the duration of these occasional sale days. The requested ruling would assist in revising the CITY's permit regulations.

There is more than one type of "occasional sale" mentioned in Title 86, Part 130, the Department's regulations on the Retailers' Occupation Tax. The "two per year occasional dinners and similar activities" rule is one of the requirements in the regulation on occasional exempt sales by churches, schools or charities. See 86 Ill. Adm. Code 130.2005(a)(4)(B), enclosed. This rule discusses the exempt sales that can be made by exclusively religious, educational or charitable organizations and states that for that purpose, "occasional" means not more than twice in any calendar year." One must remember that this "two per year" rule applies to the occasional dinners and similar fund-raisers made by an exempt organization that has obtained a tax exemption number (an "E" number) from the Department. Thus, an organization with an "E" number, such as a church or charity, can hold two rummage sales per calendar year without incurring Retailers' Occupation Tax.

The type of "occasional" sales activities mentioned in Section 130.2005 are different than those covered by 86 Ill. Adm. Code 130.110, enclosed. The Section 130.2005 occasional sales can be sales where the organizations are purchasing the items for the purpose of resale. It is only their status as exclusively religious, educational or charitable organizations which allows them to make the sales tax free.

The garage sales, yard sales or other occasional sales explained by Section 130.110 are different than those explained in Section 130.2005. For Section 130.110 occasional sales, the items being sold were first purchased for use by the seller. Section 130.110 specifically authorizes "a considerable number" of occasional sales where a retailer is disposing of machinery that he had used and no longer needs, and which he does not otherwise engage in selling. See, Section 130.110(b). Therefore, the Department cannot limit a homeowner to two garage sales per calendar year when the person is just disposing of items that were originally purchased for use and are no longer needed. On the other hand, if items are purchased for the purpose of resale, the seller should be registered under the Retailers' Occupation Tax Act and collect and remit sales tax, even if he only makes one sale. This is because a seller who purchases items for resale would be holding himself out as being engaged in selling tangible personal property at retail and incurs Retailers' Occupation Tax liability. See Section 130.110(f).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz  
Associate Counsel

KWB:msk  
Enc.